

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2026-048423

In the matter between:

SAND-VET WATER USERS ASSOCIATION

APPLICANT

And

PIETER HENDRIK SCHALK BEZUIDENHOUT MULLER

FIRST RESPONDENT

[ID No. 6[...]]

ANGELIQUE JUSTINE PRINSLOO NO

SECOND RESPONDENT

[ID No. 8[...]]

WYNAND LABUSCHAGNE NO

THIRD RESPONDENT

[ID No. 8[...]]

Neutral citation: *Sand-Vet Water Users Association v Muller and Others*
(2026-048423) [2026] ZAFSHC 400 (19 August 2026)

Coram: VAN ZYL J

Heard: 6 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 15h00 on 19 August 2026.

Summary: Application has become moot before filing of the replying affidavit – applicant persists with filing of replying affidavit – inordinate lengthy replying affidavit – application dismissed with costs.

ORDER

The application is dismissed with costs, such costs to include the costs of counsel on Scale B.

JUDGMENT

Van Zyl J

[1] In this matter the applicant initially applied for an order that the immovable property known and described as Portion [...] of the Farm G[...] R[...] 7[...], Registration Division Ventersburg, Free State Province, measuring 59.7985 hectares, held by deed of transfer T21[...] ('the property') be declared specially executable in terms of rule 46A.

[2] At the time of the launching of the application, the property was registered in the name of the first respondent, and the order was being sought based on a judgment debt in the amount of R333 616.38, which the applicant obtained by default against the first respondent in the Magistrate's Court on 22 April 2021. The applicant is a water management institution in terms of the provisions of s 1 of the National Water Act 36 of 1998 ('the NWA'). The indebtedness of the first respondent resulted from outstanding water use charges owed to the applicant in terms of the provisions of s 57(2) of the NWA, water use charges that are due to the Minister of Water and Sanitation in terms of s 58 of the NWA, as well as water research fund levies in terms of the provisions of s 11(2)(b) of the Water Research Act 34 of 1971, together with interest on the above water use charges and levies. Outstanding water use charges, and the interest thereon, are a charge on the land to which the water use relates and which is recoverable from the current owner of the land in terms of s 60 of the NWA.

[3] The second and third respondents were cited merely because of the possible interest they may have in the relief sought, since the second respondent and her husband are residing on the property. The second and third respondents have been cited in their capacity as trustees of the Prins R Trust, IT538/2010(B) ('the

Trust'). The trustees of the Trust changed during the events relevant to this application and I will therefore, for the sake of efficacy, interchangeably refer to the relevant trustees at a specific time as the Trust or, when appropriate, as the second and third respondents specifically.

[4] The application was served upon the first respondent by means of edictal citation by way of substituted service in terms of a court order dated 19 February 2026. The first respondent did not oppose the application. The second and third respondents opposed the application on the grounds set out in the answering affidavit, which I do not propose to repeat for purposes hereof.

[5] The parties are *ad idem* that the application has become moot as the property is no longer registered in the name of the first respondent. The costs of the application, however, remain in dispute between the parties.

[6] The applicant is seeking an order that the second and third respondents be ordered to pay the costs of the application as between attorney and client. The second and third respondents are seeking an order that the application be dismissed with costs, such costs to include costs of counsel on scale B.

[7] The parties are in agreement that since the application has become moot, the application is not to proceed. This principle was set out in *Tilisa Projects (Pty) Ltd v Department of Public Works and Infrastructure and Others*¹ where the following was held:

'It is generally accepted that courts do not determine academic questions or grant orders that will have no practical effect. In *Voltex (Pty) Ltd v Venkatas and Others* the Court held that mootness does not deprive the Court of jurisdiction, but it may affect the justiciability of the matter and that an application that will have not practical effect may be dismissed on that ground alone.'²

[8] Mr Saunders, on behalf of the applicant, conceded that since the application has become moot, it may be dismissed.

¹ *Tilisa Projects (Pty) Ltd v Department of Public Works and Infrastructure and Others* (9756/21P) [2025] ZAKZPHC 85 (15 September 2025).

² *Ibid* para 21.

[9] The usual principle regarding costs is that costs should follow the result. Should the application be dismissed, the usual order would therefore be that the applicant should pay the costs of the application. Mr Els, on behalf of the second and third respondents, consequently requested an order accordingly.

[10] As mentioned earlier, the applicant, however, contends that the second and third respondents be ordered to pay the costs of the application on a punitive scale.

[11] The applicant correctly states in its heads of argument that a punitive costs order may be granted in extraordinary circumstances and if special considerations arise out of the conduct of a party or the circumstances that gave rise to the application. A punitive costs order would ensure that the party seeking such an order is not put out of pocket and is thus not to be granted lightly.³ Such special or extraordinary circumstances include when a party was dishonest or fraudulent, or was actuated by malice or has been guilty of gross misconduct either in the transaction under enquiry or in the conduct of the case.⁴

[12] The submissions made by the applicant in its heads of argument in support of its contention that the second and third respondents should be ordered to pay the costs of the application and further on a punitive scale, are the following:

'26. The sole reason why the application has become moot is the fact that the second and third respondents, secretly after they received the notice of the application, transferred the property from the name of the First Respondent into their own names. This is a transparent stratagem to avoid payment of water use charges and to frustrate the Applicant's efforts to collect water use charges on [the property].

27. The stratagem is highlighted by the fact that neither the second respondent nor the representatives of the Prins A Trust ever informed the Applicant, either before the application or thereafter that [the property] was sold on 24 October 2020, by the Prins A Trust, sold to Alidasync (Pty) Ltd.

³ *Rigney v BMW Financial Services* (96247/15) [2017] ZAGPPHC 330 (5 June 2017) para 13.

⁴ *Van Dyk v Conradie and Another* 1963 (2) SA 413 (CPD) at 418E–F.

28. This fact is also conveniently absent from the answering affidavit of the second respondent. It is evident from the absence of this fact that the Second and Third Respondents are not candid with the Court.

29. The way in which the Second and Third Respondents have conducted the litigation and the fact that the versions in the affidavits under case number 888/2022 and the current answering affidavit differ should also weigh against the Second and Third Respondents.'

[13] I do not intend repeating all the facts contained in the application. I am only going to deal with the facts which I deem relevant to the determination of an appropriate costs order.

The answering affidavit

[14] The application was launched on 3 March 2026. The answering affidavit was deposed to on 22 May 2026. I will now deal with the relevant allegations contained in the answering affidavit.

[15] On 20 May 2019, at Virginia, the Trust concluded a written agreement of sale with the first respondent in terms whereof the first respondent sold the property to the Trust for an amount of R4 000 000.00. The Trust paid the full purchase price. A copy of the deed of sale is attached to the founding affidavit as annexure 'OA9'.

[16] As a result of the first respondent's failure to sign all documents necessary to transfer the property into the name of the Trust, the Trust launched an application in this court under case number 888/2022 for an order compelling the first respondent to sign the required documents. On 14 April 2022, such an order was granted in favour of the Trust, and a copy of the order is attached to the founding affidavit as annexure 'OA3'. Although the Registrar of Deeds was cited as second respondent in the said application, no relief was sought or granted against the Registrar of Deeds.

[17] As a result of the order, a caveat was noted against the property. The caveat under reference number I1920/2022 appears on a Windeed search and specifically refers to the case number of 888/2022. A copy of the Windeed search is attached to the founding affidavit as annexure 'OA2'.

[18] Despite the fact that the Trust obtained the order to compel against the first respondent, transfer of the property into the name of the Trust could not be effected since the first respondent had to pay a substantial amount to SARS before transfer could take place.

[19] Very importantly, the following is stated at paragraph 15.5 of the answering affidavit:

‘As a result of delays on the part of the First Respondent, transfer of the property has not yet been effected into the name of the Trust, but steps are being taken to effect transfer of the property into the name of the Trust *as soon as possible*.’ (My emphasis.)

The replying affidavit

[20] I will now deal with the relevant allegations by the applicant contained in the replying affidavit, which affidavit was filed on 10 June 2026.

[21] On 26 May 2026 the property was transported into the name of the Trust. A copy of the deed of transfer is attached to the replying affidavit as ‘R2’.

[22] On the same day the property was transported into the name of Alidasync (Pty) Ltd (‘the company’). A copy of the deed of transfer is attached to the replying affidavit as ‘R3’.

[23] The deponent to the answering affidavit, Ms Prinsloo, the second respondent, is also the only director of the company. Ms Prinsloo did not take the court into her confidence and has not been candid with the court.

[24] Before the bringing of the application the applicant’s attorney addressed multiple enquiries to the then conveyancer of the Trust regarding what is happening in respect of the transport of the property into the name of the trustees of the Trust. On 31 August 2021, the applicant’s attorney received a letter from the then attorney of the Trust wherein it was confirmed that the Trust bought the property from the first respondent and was already occupying the property.

[25] In the answering affidavit, the Trust mentions the sale agreement concluded between the first respondent and the Trust in terms whereof the property was sold to the Trust for an amount of R4 000 000.00. There is no mention in the answering affidavit about the second agreement which was concluded on 24 October 2020 in terms of which the purchase price was reduced to an amount of R600 000.00, which agreement was attached to the founding affidavit under case number 888/2022 as 'F6'. There is no explanation in the answering affidavit about the reasons for the second agreement or for the fact that the price was reduced drastically.

[26] The answering affidavit contains no explanation as to what happened between the date upon which the court order to compel under case number 888/2022 was obtained up until the date when this application was served on the Trust.

[27] There is no allegation in the answering affidavit that the Trust had previously sold the property to the company and that the Trust was in the process of transferring the property to the company. This is despite the fact that the trustees of the Trust granted a power of attorney to the conveyancer that dealt with the transfer of the property to the company on 24 April 2026, a mere 28 days before the replying affidavit was filed.

[28] There is also no mention in the answering affidavit that the power of attorney that was granted by the first respondent for the transfer of the property into the name of the Trust was granted as far back as 22 April 2022.

[29] There is also no explanation why it took four years after the power of attorney was given to grant transfer on 22 April 2022 until the date upon which the transfer indeed occurred.

[30] It is not mentioned in the answering affidavit that it was an express term in clause 16.4 of the first sale agreement that the first respondent would be liable for all monies due to the applicant for water use charges up until the date of occupation of the property, whilst the second agreement makes provision in

clause 5.4 thereof that the Trust will be liable to pay the water use charges to the applicant.

[31] On 5 September 2025 the attorneys of the Trust advised the attorney of the applicant in a letter that ‘. . . seller, however, resides in Botswana and can only attend to the signature of the necessary documents after the 15th instant . . .’

[32] The applicant’s attorney, Mr Austen ‘later spoke telephonically to the secretary of the transferring attorney, enquiring about the transfer process of the property, and the secretary of the transferring attorney undertook to ask the conveyancer to return Mr Austen’s call. Up until the signing of this affidavit, Mr Austen has not received any returning telephone calls from the conveyancer. If the conveyancer was candid [in] the correspondence and returned Mr Austen’s call and explained the position and how far the process is, the applicant would not have brought this application at all.’

[33] A copy of the title deed in terms of which the property was transferred into the name of the first respondent was obtained. No caveat is registered on the deed of transfer. The court order issued under case number 888/2022 did not order that the registrar of deeds register a caveat over the property.

[34] The Trust had a court order since 14 April 2022 and has done nothing to transfer the property into the name of the trustees before the filing of the present application.

[35] The fact that the property was transferred into the name of the company immediately after the second and third respondents obtained transfer of the property into their names was not disclosed in the answering affidavit. The second and third respondents did not take the court into their confidence, which was done for ulterior purposes.

Consideration of the allegations and submissions

[36] The applicant has been aware that the property was sold to the Trust and that it was being occupied by the Trust since 2021 already. The default judgment against the first respondent was also obtained on 22 April 2021 already. The

applicant launched the present application only during March 2026. Mr Saunders submitted that there were negotiations between the parties in the meantime and that the applicant, therefore, does not stand to be penalised for not having brought this application earlier. However, the applicant did so at its own peril. Further, according to the replying affidavit, the last update the applicant received regarding the transaction was on 5 September 2025, when the applicant's attorney specifically advised that the first respondent will attend to the signature of the necessary documents 'after the 15th instant'. This was an indication that transfer of the property was imminent. Although the allegation is made that the applicant's attorney 'later' directed a telephonic enquiry to the secretary of the transferring attorney, it is not stated when this was and no further steps were taken by or on behalf of the applicant when no returning telephone call was received by the applicant's attorney from the transferring attorney, but for the application that was launched only six months later. The order for edictal citation by substituted service was also only obtained on 19 February 2026, which application could have been launched at an earlier stage.

[37] It consequently appears that the applicant dragged its feet and now attempts to put the blame on the second and third respondents.

[38] From a reading of the papers as a whole, also the application papers filed under case number 888/2022 attached to the replying papers, it is evident that there were numerous disputes between the first respondent and the trustees of the Trust at the time, which led to the delay in the transferral of the property into the name of the Trust.

[39] Although the power of attorney for the transfer of the property into the name of the company was only signed on 24 April 2026, the sale agreement between the parties was already concluded on 24 October 2024, as evident from the deed of transfer attached to the replying affidavit as 'R3'. The sale was not concluded as part of some or other stratagem by the Trust, as alleged by the applicant. In any event, in my view, the applicant had no entitlement or right to be informed as to the fact that the property was to be sold on from the Trust to the company. Whether the property was to be transferred into the name of the Trust or into the name of the company is irrelevant, as it has the same impact upon the applicant

and the default judgment it previously obtained. The applicant still has its remedies against the current owner.

[40] I can also find nothing untoward in the fact that the Trust did not mention the second sale agreement concluded between the first respondent and the Trust. From the deed of transfer attached to the replying affidavit as annexure 'R2', it is evident that the transfer in fact took place in terms of the first sale agreement of 20 May 2019 and for the agreed purchase price of R4 000 000.00. The second sale agreement was therefore irrelevant.

[41] The applicant was forewarned in the answering affidavit that although there have been delays previously, steps are being taken to effect transfer of the property into the name of the Trusts as soon as possible.

[42] At the time of the filing of the replying affidavit, the applicant had already become aware of the transfer of the property. Notwithstanding the knowledge that the application had become moot, the applicant not only chose to persist with the filing of the replying affidavit but filed a replying affidavit of inordinate length.

[43] In the totality of the above facts and findings, I find that there is no basis upon which the second and third respondents are to be mulcted in costs of the application, let alone on a punitive scale. The costs should follow the outcome. In my view, the applicant is to be ordered to pay the costs of the application, with counsel's fees on Scale B.

[44] Because of the findings made, I deem it unnecessary to deal with the issue regarding the relevant court from which this application was instituted. The registration, or not, of a caveat has also become irrelevant.

Order

[45] The following order is made:

The application is dismissed with costs, such costs to include the costs of counsel on Scale B.

C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	JHA Saunders
Instructed by:	Hill, McHardy & Herbst, Bloemfontein
For the Respondent:	J Els
Instructed by:	EG Cooper Majiedt Inc, Bloemfontein